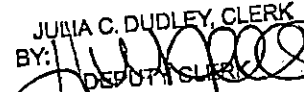


IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

SEP 20 2021

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

Elizabeth Sines, et al

Plaintiffs

v

Jason Kessler, et al

Defendants

Case No: 3:17-cv-072-NKM

RESPONSE TO THE COURT'S ORDER ON TRANSPORTATION COSTS (Doc 1031)

Comes now the Defendant, Christopher Cantwell, and, he makes the following Response to the Court's Order, Doc 1031, suggesting that he pay Transportation costs:

- 1) Though the Court's Order is dated August 26, 2021, Cantwell did not receive it until September 9, 2021. Doc 1031. Cantwell has promptly responded.
- 2) The Court cites no authority suggesting that it can assess transportation costs against Cantwell or any other party. While the Court does cite to Muhammad v Warden, Balt City Jail 849 F 2d 107 (4th Cir 1988) for the proposition that such costs can be considered in the decision to grant a Writ of Habeas Corpus Ad Testificandum, it does not authorize the assessment of those costs.
- 3) The assessment of costs is authorized by 28 USC §1915 and §1920. 28 USC §1915 is the in forma pauperis statute, and, while it makes prisoners liable for certain costs if they bring an action, it is not applicable to a prisoner defending an action. Cantwell has attached a motion for IFP status to this motion.
- 4) 28 USC §1920 allows the court to assess certain costs against a party

against him judgment is entered, and, the only case that Cantwell could find on short notice assessing costs of prisoner transportation, Card v DC Dep't of Corr 2005 US Dist LEXIS 48692 (ED Va 2005), took this approach; there, the prisoner won the case and the DC Dep't of Corrs was ordered to pay the US Marshals' Service's costs. Card, however, was likely wrongfully decided in this regard.

- 5) 28 USC §1921 lists the only costs born by the US Marshals' Service that can be awarded against a party, and, prisoner transportation costs don't seem to be among them.
- 6) Cantwell also doubts that it costs the USMS \$15,000 to place him in an empty seat on an already chartered plane that would be travelling with that seat empty if he wasn't in it.

Thus, Cantwell believes that this Court has no statutory authority to award the costs of transportation to and from trial against him or any party. If it does have such authority, it may only award costs against the party against whom judgment is taken as regards Cantwell. Further, any such award would be governed by the IFP statutes and subject to remittitur. Thus, at best, this is an issue that should be addressed post-judgment, where Cantwell would want discovery as to the actual costs of his transportation.

Respectfully Submitted,



Christopher Cantwell
USP-Marion
PO Box 1000
Marion, IL 62959

CERTIFICATE OF SERVICE

I hereby certify that this Response was mailed to the Clerk of the Court,

16
1st Class Postage Prepaid, this ~~15~~¹⁶th day of September, 2021, for
posting on the ECF, to which all other parties are subscribed, and,
was handed to USP-Marion staff members Kathy Hill and/or Nathan
Simpkins for electronic transmittal to the Court.



Christopher Cantwell

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the
Western District of VirginiaSines et al

Plaintiff/Petitioner

Kessler et al

Defendant/Respondent

Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)Defendant

I am a ~~plaintiff or petitioner~~ in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: USP Marion - CMV
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|---|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

Sometimes people put money in my commissary account, but it is not reliable and provides no surplus

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$30 - commissary

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

Last I checked I had \$50 in a Robin Hood stock account and <\$1000 in crypto currency exchange

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

I am incarcerated, my bare needs are covered by the B.O.P. I buy my own soap, coffee, snacks, clothes, approx \$50/wk

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

X

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

My car was Repossessed while I was locked up, I lost my apartment and owe approx \$2,000 in back rent, I estimate I have \$20,000 in credit card debt which I have paid in 7/yr

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date:

9-16-2021C. Cantwell
Applicant's signatureChristopher Cantwell
Printed name